



## STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	<b>02/25/00</b>	Bill No:	<b>AB 2713</b>
Tax:	<b>Sales and Use</b>	Author:	<b>Olberg</b>
Board Position:		Related Bills:	<b>AB 13 (1999)</b>

### **BILL SUMMARY:**

This bill would provide a sales and use tax exemption for sales of over-the-counter medicines to any person 55 years of age or older.

### **ANALYSIS:**

#### Current Law:

Under existing law, sales or use tax applies to all sales or purchases of tangible personal property, unless otherwise exempted or excluded from the computation of sales or use tax.

Existing law provides a number of exemptions and/or exclusions from the sales and use tax. For example, the sales and use tax law contains the following exemptions for “necessities of life”:

- food for consumption at home (Section 6359)
- prescription medicines (Section 6369)
- gas, electricity and water (Section 6353)
- “food” animals, such as cows, pigs and chickens, and “food” plants, such as asparagus, nut trees, and strawberry plants (Section 6358)

Under current law, sales of over-the-counter medicines are generally subject to tax. However, sales of over-the-counter medicines by a registered pharmacist *pursuant to a prescription* by a physician, dentist or podiatrist are exempt from sales and use tax under Section 6369 of the Sales and Use Tax Law. Therefore, over-the-counter sales of such items as aspirin, cough syrups, and throat lozenges by a registered pharmacist are exempt from tax under existing law provided they are prescribed by a physician, dentist or podiatrist. In addition, sales of over-the counter medicines to a health facility, such as a hospital, that are later furnished to patients in that facility pursuant to the order of a physician, are also exempt from tax under the prescription medicine exemption contained in Section 6369.

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Proposed Law:

This bill would amend Section 6369 of the Sales and Use Tax Law to provide a sales and use tax exemption for sales of over-the-counter medicines to any person 55 years of age or older.

The bill would become operative on the first day of the calendar quarter commencing more than 90 days from the date the bill is enacted.

Background:

A measure to exempt sales and purchases of over-the-counter medicines, as specified, as well as incontinence supplies, was considered during the 1999 Legislative Session. That measure, AB 13 (Dickerson, et al.), failed to pass out of the Assembly Revenue and Taxation Committee.

**COMMENTS:**

1. **Sponsor and purpose of the bill.** This bill is sponsored by the author. Its purpose is to provide some financial relief for the elderly by providing an exemption from sales and use tax for their purchases of over-the-counter medicines.
2. **Items proposed to be exempted should be clearly defined.** One of the difficulties in administering new exemptions for the Board and in achieving compliance by retailers is the ability for the Board to establish clear guidelines for retailers that enable them to determine with certainty what sales qualify for the exemption. This bill, if enacted in its present form, would require a significant effort to identify items that do or do not qualify as a nonprescription medicine. Although the term “over the counter” is obvious for most medicines, there are numerous items on the market which have medicinal claims, yet are not commonly recognized as nonprescription medicines (i.e., dietary supplements, distilled water, weight reducing drinks, Seven-Up, echinacea, St. John’s Wort, etc). Clarification of the items the author intends to be included within the exemption should be incorporated into the bill. Without such clarification, administration of the proposed exemption could become difficult.
3. **Retailers would be required to burden senior citizens with copies of their drivers’ licenses or identification cards in order to document exempt sales.** Under the law, for the purpose of the proper administration of the sales and use tax and to prevent evasion of the sales tax, it is presumed that all receipts of retailers are subject to tax unless the contrary is established. This presumption may be rebutted by the seller by, among other things, establishing to the satisfaction of the Board that the gross receipts from the sale are not subject to the tax. For purposes of this exemption, since it is conditioned on the person’s age (55 years or older), the retailer would be required to obtain and retain documentation that the sale qualified

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for the exemption. This would require the retailer to ask each customer that may appear 55 years of age or older for a copy of his or her driver's license or other form of identification to verify the purchaser's age. This would likely be burdensome to most retailers, and especially burdensome to senior citizens. Due to the fact that so many establishments, both large and small, sell nonprescription medicines (e.g., snack bars, gas stations, toy stores, health foods stores, etc.), a preferable approach may be to eliminate the age condition within the proposed exemption. In that way, retailers would not have to obtain and retain supporting documents to claim the sale as exempt, other than the normal cash register tapes or sales invoices.

### **COST ESTIMATE:**

An estimate of the administrative costs associated with this bill is pending. These costs would include identifying the specific items that qualify for the proposed exemption, providing notices and guidance to affected retailers, auditing claimed exemptions, drafting regulations, and training Board staff.

### **REVENUE ESTIMATE:**

#### **Background, Methodology, and Assumptions**

According to the Consumer Healthcare Products Association (CHPA, formerly the Non-Prescription Drug Manufacturers' Association), total sales of over-the-counter medicines (OTC's) for 1998 amounted to \$16.7 billion for the United States. The CHPA also estimates that persons 65 years and older account for 30 percent of all OTC sales, or \$5.01 billion ( $\$16.7 \text{ billion} \times .30$ ).

According to the US Census, the total population of persons 65 years and older is 34.4 million. The population of persons 65 years and older in California is 3.713 million, or 10.8 percent of total US population of persons 65 years and older. Total annual expenditures by persons 65 years and older in California is estimated to be \$541.1 million ( $\$5.01 \text{ billion} \times .108$ ).

The US population of persons 64 years and younger is 235.9 million. The population in California of persons 64 years and younger is 29.3 million. The share of OTC sales for persons 64 years and younger in the US population is \$11.69 billion ( $\$16.7 \text{ billion} - \$5.01 \text{ billion}$ ).

Currently, we have no data on consumption of OTC's by persons 55 to 64 years of age. Annual per capita expenditures in the US by persons 65 years and older are estimated to be \$146 ( $\$5.01 \text{ billion} / 34.4 \text{ million}$ ). The annual per capita expenditures in the US by persons 64 years and younger are estimated to be \$50 ( $\$11.69 \text{ billion} / 235.9 \text{ million}$ ). However, we assume that expenditures by persons 55 to 64 fall in between the two per capita figures. We estimate that persons 55 to 64 years of age spend \$100

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per capita annually on OTC's. The California population of persons 55 to 64 years of age is 2,757,000, and expenditures on OTC's by that segment are estimated to be \$275.7 million (2,757,000 x \$100).

The annual estimated sales of OTC's that qualify under this measure are \$816.8 million (\$541.1 million + \$275.7 million).

### **Revenue Summary**

Exempting the \$816.8 million in sales of over-the-counter medicine to persons 55 years and older from the state and local sales and use tax would result in the following annual revenue loss:

	<u>Revenue Effect</u>
State loss (5%)	\$ 40.8 million
Local loss (2.25%)	\$ 18.4 million
Transit loss (0.67%)	<u>\$ 5.5 million</u>
Total	<u>\$ 64.7 million</u>

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